

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:17-cv-00976-SHS**

Wessler v. United States Department of Justice et al
Assigned to: Judge Sidney H. Stein
Cause: 05:552 Freedom of Information Act

Date Filed: 02/10/2017
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff**Seth Freed Wessler**

represented by **James David Pollock**
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V.

Defendant**United States Department of Justice**

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Defendant**United States Marshals Service**

represented by **Peter Max Aronoff**
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Date Filed	#	Docket Text
02/10/2017	<u>1</u>	COMPLAINT against United States Department of Justice, United States Marshals Service. (Filing Fee \$ 400.00, Receipt Number 0208-13298373) Document filed by Seth Freed Wessler. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Lustberg, Lawrence) (Entered: 02/10/2017)
02/10/2017	<u>2</u>	CIVIL COVER SHEET filed. (Lustberg, Lawrence) (Entered: 02/10/2017)
02/10/2017	<u>3</u>	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to United States

		Department of Justice, re: <u>1</u> Complaint. Document filed by Seth Freed Wessler. (Lustberg, Lawrence) Modified on 2/13/2017 (pc). (Entered: 02/10/2017)
02/10/2017	<u>4</u>	FILING ERROR – DEFICIENT PLEADING – SUMMONS REQUEST PDF ERROR – REQUEST FOR ISSUANCE OF SUMMONS as to United States Marshals Service, re: <u>1</u> Complaint. Document filed by Seth Freed Wessler. (Lustberg, Lawrence) Modified on 2/13/2017 (pc). (Entered: 02/10/2017)
02/13/2017		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above–entitled action is assigned to Judge Sidney H. Stein. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php . (pc) (Entered: 02/13/2017)
02/13/2017		Magistrate Judge Debra C. Freeman is so designated. (pc) (Entered: 02/13/2017)
02/13/2017		Case Designated ECF. (pc) (Entered: 02/13/2017)
02/13/2017	<u>5</u>	NOTICE OF APPEARANCE by James David Pollock on behalf of Seth Freed Wessler. (Pollock, James) (Entered: 02/13/2017)
02/13/2017		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney to RE–FILE Document No. <u>4</u> Request for Issuance of Summons, <u>3</u> Request for Issuance of Summons,. The filing is deficient for the following reason(s): the date field on the official A.O. Summons form was completed by the attorney; Caption title on the summons must match the caption title on the complaint and be the same for both summons. Only include the party names from the complaint caption title on the summons. Do not include Jeff Sessions and David L. Harlow. Re–file the document using the event type Request for Issuance of Summons found under the event list Service of Process – select the correct filer/filers – and attach the correct summons form PDF. (pc) (Entered: 02/13/2017)
02/13/2017	<u>6</u>	REQUEST FOR ISSUANCE OF SUMMONS as to United States Department of Justice, re: <u>1</u> Complaint. Document filed by Seth Freed Wessler. (Pollock, James) (Entered: 02/13/2017)
02/13/2017	<u>7</u>	REQUEST FOR ISSUANCE OF SUMMONS as to United States Marshals Service, re: <u>1</u> Complaint. Document filed by Seth Freed Wessler. (Pollock, James) (Entered: 02/13/2017)
02/14/2017	<u>8</u>	ELECTRONIC SUMMONS ISSUED as to United States Department of Justice. (kl) (Entered: 02/14/2017)
02/14/2017	<u>9</u>	ELECTRONIC SUMMONS ISSUED as to United States Marshals Service. (kl) (Entered: 02/14/2017)
02/15/2017	<u>10</u>	ORDER SCHEDULING INITIAL PRETRIAL CONFERENCE: Counsel are directed to appear in Courtroom 23A on Tuesday, April 11, 2017, at 10:30 a.m. for an initial pretrial conference pursuant to Fed. R. Civ. P. 16. At that time, counsel for all parties must appear prepared to discuss the progress of the case and the scheduling of discovery proceedings, any dispositive motions, the feasibility of settlement or alternative dispute resolution, the dates for future conferences, and the submission of a joint pretrial order. And as set forth herein. SO ORDERED. Initial Conference set for 4/11/2017 at 10:30 AM in Courtroom 23A, 500 Pearl Street, New York, NY 10007 before Judge Sidney H. Stein. (Signed by Judge Sidney H. Stein on 2/15/2017) (ama) (Entered: 02/15/2017)
02/15/2017	<u>11</u>	CERTIFICATE OF SERVICE. United States Department of Justice served on 2/15/2017, answer due 3/8/2017; United States Marshals Service served on 2/15/2017, answer due 3/8/2017. Service was made by MAIL. Document filed by Seth Freed Wessler. (Pollock, James) (Entered: 02/15/2017)
03/17/2017	<u>12</u>	NOTICE OF APPEARANCE by Peter Max Aronoff on behalf of United States Department of Justice, United States Marshals Service. (Aronoff, Peter) (Entered: 03/17/2017)

03/20/2017	<u>13</u>	CONSENT LETTER MOTION for Extension of Time to File Answer re: <u>1</u> Complaint addressed to Judge Sidney H. Stein from Peter Aronoff dated 3/20/2017. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 03/20/2017)
03/20/2017	<u>14</u>	ORDER: granting <u>13</u> Letter Motion for Extension of Time to Answer. SO ORDERED. United States Department of Justice answer due 4/10/2017; United States Marshals Service answer due 4/10/2017. (Signed by Judge Sidney H. Stein on 3/20/2017) (ama) (Entered: 03/20/2017)
04/10/2017	<u>15</u>	ANSWER to <u>1</u> Complaint. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 04/10/2017)
04/11/2017		Minute Entry for proceedings held before Judge Sidney H. Stein: Initial Pretrial Conference held on 4/11/2017. Counsel for all parties appeared. (lab) (Entered: 04/11/2017)
04/11/2017	<u>16</u>	ORDER: A pretrial conference having been held today, with counsel for all parties present, IT IS HEREBY ORDERED that the next conference will be held on April 21, 2017, at 11:00 a.m. (Status Conference set for 4/21/2017 at 11:00 AM before Judge Sidney H. Stein.) (Signed by Judge Sidney H. Stein on 4/11/2017) (ras) (Entered: 04/11/2017)
04/20/2017	<u>17</u>	JOINT LETTER MOTION to Adjourn Conference <i>and Approve Proposed Schedule</i> addressed to Judge Sidney H. Stein from Seth Freed Wessler dated April 20, 2017. Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 04/20/2017)
04/20/2017	<u>18</u>	ORDER granting <u>17</u> Letter Motion to Adjourn Conference. The Court adopts the parties' proposed schedule and adjourns the April 21 conf to June 19 at 11 AM. Status Conference set for 6/19/2017 at 11:00 AM before Judge Sidney H. Stein. (Signed by Judge Sidney H. Stein on 4/20/2017) (kgo) (Entered: 04/20/2017)
05/18/2017	<u>19</u>	CONSENT LETTER MOTION for Extension of Time <i>to complete certain productions</i> addressed to Judge Sidney H. Stein from Peter Aronoff dated 5/18/2017. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 05/18/2017)
05/18/2017	<u>20</u>	ORDER: granting <u>19</u> Letter Motion for Extension of Time. (The current schedule calls for the government to process all documents responsive to requests 3, 4, 5, and 6 by May 31, 2017. However, because of the number of responsive records and the limited resources of USMS, it will not be possible to process all of the responsive documents by May 31. The government respectfully requests that the schedule be modified so that the government make rolling monthly productions of approximately one third of the responsive documents for requests 3–6 by May 31, June 30, and July 31, so that all responsive documents are processed by July 31. This proposed date still falls comfortably within the approximately six–month time frame (that is, until approximately October 11, 2017) that the government represented would be feasible at the initial conference on April 11, 2017. Plaintiff has consented to deft. request). SO ORDERED. (Signed by Judge Sidney H. Stein on 5/18/2017) (ama) (Entered: 05/18/2017)
06/12/2017	<u>21</u>	STATUS REPORT. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 06/12/2017)
06/13/2017	<u>22</u>	MEMO ENDORSEMENT: on re: <u>21</u> Status Report filed by United States Department of Justice, United States Marshals Service. ENDORSEMENT: A Status Letter is to be submitted by June 16 at Noon. SO ORDERED. (Signed by Judge Sidney H. Stein on 6/13/2017) (ama) (Entered: 06/13/2017)
06/16/2017	<u>23</u>	STATUS REPORT. Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 06/16/2017)
06/19/2017		Minute Entry for proceedings held before Judge Sidney H. Stein: Status Conference held on 6/19/2017. Counsel for all parties were present. (lab) (Entered: 06/19/2017)
06/19/2017	<u>24</u>	ORDER: A pretrial conference having been held today, with counsel for all parties present, IT IS HEREBY ORDERED that: 1. The last day for completion of production of the Quality Assurance Review reports is extended to December 1, 2017; 2. The

		plaintiff will provide a list of names to defendants of the people he wants medical records for; and 3. The next status conference will be held on July 27, 2017, at 2:30 p.m. Status Conference set for 7/27/2017 at 02:30 PM before Judge Sidney H. Stein. (Signed by Judge Sidney H. Stein on 6/19/2017) (kgo) (Entered: 06/19/2017)
07/27/2017		Minute Entry for proceedings held before Judge Sidney H. Stein: Status Conference held on 7/27/2017. Counsel for all parties were present. (lab) (Entered: 07/27/2017)
07/27/2017	<u>25</u>	ORDER: A pretrial conference having been held today, with counsel for all parties present, IT IS HEREBY ORDERED that there will be a pretrial conference on October 27, 2017, at 2:30 p.m. SO ORDERED., (Pretrial Conference set for 10/27/2017 at 02:30 PM before Judge Sidney H. Stein.) (Signed by Judge Sidney H. Stein on 7/27/2017) (ama) (Entered: 07/27/2017)
10/27/2017	<u>26</u>	ORDER: IT IS HEREBY ORDERED that The extended deadline for the production of all QARs is December 1, 2017. If that deadline is not met, the Court intends to direct that more resources be devoted to this review. The parties are directed to meet and confer in person in order to define the non-QAR documents that are responsive to Requests 3-6. On or before November 20, 2017, defendant shall inform plaintiff and the Court as to when the balance of non-QAR documents responsive to Requests 3-6 can be produced. There will be a pretrial conference on December 8, 2017, at 10:00 am. Plaintiff's counsel may appear by phone. (Pretrial Conference set for 12/8/2017 at 10:00 AM before Judge Sidney H. Stein.) (Signed by Judge Sidney H. Stein on 10/27/2017) (ap) (Entered: 10/27/2017)
10/27/2017		Minute Entry for proceedings held before Judge Sidney H. Stein: Status Conference held on 10/27/2017. Counsel for all parties were present. (lab) (Entered: 11/01/2017)
11/20/2017	<u>27</u>	LETTER addressed to Judge Sidney H. Stein from Peter Aronoff dated 11/20/2017 re: status update on non-QAR documents. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 11/20/2017)
12/01/2017	<u>28</u>	LETTER MOTION for Extension of Time <i>to complete processing QARs and correspondence</i> addressed to Judge Sidney H. Stein from Peter Aronoff dated 12/1/2017. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 12/01/2017)
12/08/2017	<u>29</u>	LETTER addressed to Judge Sidney H. Stein from J. David Pollock dated December 8, 2017 re: In Opposition to a Further Extension of Time. Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 12/08/2017)
12/08/2017		Minute Entry for proceedings held before Judge Sidney H. Stein: Pretrial Conference held on 12/8/2017. Counsel for all parties were present. (lab) (Entered: 12/08/2017)
12/08/2017	<u>30</u>	ORDER: A pretrial conference having been held today, with plaintiff's counsel attending by phone, IT IS HEREBY ORDERED that: The extended deadline for the production of all QARs and the related correspondence is March 1, 2018. If defendant needs to add additional personnel to the processing and production in order to meet that deadline, it is directed to do so. Sanctions will result from the failure to meet the March 1 deadline; Following that deadline, plaintiff shall narrow his remaining requests and inform the government of the narrowed universe of documents plaintiff seeks. In response, defendant shall determine the time needed to respond to those narrowed requests. The parties shall submit letters informing the Court of the status of this process on or before March 19, 2018; and There will be a pretrial conference on March 22, 2018, at 11:00 am. (Pretrial Conference set for 3/22/2018 at 11:00 AM before Judge Sidney H. Stein.) (Signed by Judge Sidney H. Stein on 12/8/2017) (ap) (Entered: 12/08/2017)
03/19/2018	<u>31</u>	CONSENT LETTER MOTION to Adjourn Conference <i>and status update</i> addressed to Judge Sidney H. Stein from Peter Aronoff dated 3/19/2018. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 03/19/2018)
03/20/2018	<u>32</u>	ORDER granting <u>31</u> Letter Motion to Adjourn Conference. The March 22 Conf. is adjourned to April 10 at 11 A.M. So Ordered. Status Conference set for 4/10/2018 at 11:00 AM before Judge Sidney H. Stein. (Signed by Judge Sidney H. Stein on 3/20/2018) (js) (Entered: 03/20/2018)

04/10/2018		Minute Entry for proceedings held before Judge Sidney H. Stein: Status Conference held on 4/10/2018. Counsel for all parties were present. (lab) (Entered: 04/10/2018)
04/10/2018	<u>33</u>	ORDER: IT IS HEREBY ORDERED that: There will be a pretrial conference on May 31, 2018, at 2:30 p.m. (As further set forth in this Order.) (Pretrial Conference set for 5/31/2018 at 02:30 PM before Judge Sidney H. Stein.) (Signed by Judge Sidney H. Stein on 4/10/2018) (cf) (Entered: 04/10/2018)
05/31/2018		Minute Entry for proceedings held before Judge Sidney H. Stein: Status Conference held on 5/31/2018. Counsel for all parties were present. (lab) (Entered: 05/31/2018)
05/31/2018	<u>34</u>	ORDER: A pretrial conference having been held today, with counsel for all parties present, IT IS HEREBY ORDERED that the parties shall submit a letter by June 14, 2018, proposing an agreed-upon schedule for (1) cross motions for summary judgment regarding the withheld portions of the medical files, and (2) the remaining production. SO ORDERED. (Signed by Judge Sidney H. Stein on 5/31/2018) (ama) (Entered: 05/31/2018)
06/14/2018	<u>35</u>	LETTER addressed to Judge Sidney H. Stein from J. David Pollock dated June 14, 2018 re: Status Update in Accordance with the Court's May 31, 2018 Order. Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 06/14/2018)
06/18/2018	<u>36</u>	MEMO ENDORSEMENT on re: <u>35</u> Letter Status Update, filed by Seth Freed Wessler. ENDORSEMENT: So Ordered. (Signed by Judge Sidney H. Stein on 6/18/18) (yv) (Entered: 06/18/2018)
06/27/2018	<u>37</u>	CONSENT LETTER MOTION for Extension of Time <i>to file opening summary judgment brief</i> addressed to Judge Sidney H. Stein from Peter Aronoff dated 6/27/2018. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 06/27/2018)
06/28/2018	<u>38</u>	ORDER granting <u>37</u> Letter Motion for Extension of Time. SO ORDERED. (Signed by Judge Sidney H. Stein on 6/28/2018) (ama) (Entered: 06/28/2018)
06/28/2018	<u>39</u>	LETTER addressed to Judge Sidney H. Stein from SETH WESSLER dated June 28, 2018 re: Status Update. Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 06/28/2018)
07/06/2018	<u>40</u>	MOTION for Partial Summary Judgment <i>with respect to the assertion of FOIA privacy exemptions for medical records</i> . Document filed by United States Department of Justice, United States Marshals Service. Responses due by 7/27/2018(Aronoff, Peter) (Entered: 07/06/2018)
07/06/2018	<u>41</u>	DECLARATION of Katherine Day in Support re: <u>40</u> MOTION for Partial Summary Judgment <i>with respect to the assertion of FOIA privacy exemptions for medical records</i> .. Document filed by United States Department of Justice, United States Marshals Service. (Aronoff, Peter) (Entered: 07/06/2018)
07/06/2018	<u>42</u>	MEMORANDUM OF LAW in Support re: <u>40</u> MOTION for Partial Summary Judgment <i>with respect to the assertion of FOIA privacy exemptions for medical records</i> . . Document filed by United States Department of Justice, United States Marshals Service. (Aronoff, Peter) (Entered: 07/06/2018)
07/26/2018	<u>43</u>	CONSENT LETTER MOTION for Extension of Time <i>to file cross-motion for summary judgment</i> addressed to Judge Sidney H. Stein from J. David Pollock dated July 26, 2018. Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 07/26/2018)
07/27/2018	<u>44</u>	ORDER: granting <u>43</u> Letter Motion for Extension of Time. SO ORDERED. (Signed by Judge Sidney H. Stein on 7/27/2018) (ama) (Entered: 07/27/2018)
07/27/2018		Set/Reset Deadlines: Responses due by 8/3/2018 Replies due by 8/17/2018. (ama) (Entered: 07/27/2018)
08/03/2018	<u>45</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – MOTION for Partial Summary Judgment . Document filed by Seth Freed Wessler. (Attachments: # <u>1</u> Memorandum of Law In Support of Motion for Partial Summary Judgment, # <u>2</u> Affidavit Declaration of Seth Freed Wessler)(Pollock, James) Modified on 8/15/2018 (ldi). (Entered: 08/03/2018)

08/10/2018	<u>46</u>	REPLY MEMORANDUM OF LAW in Support re: <u>40</u> MOTION for Partial Summary Judgment <i>with respect to the assertion of FOIA privacy exemptions for medical records. and in opposition to plaintiff's cross-motion.</i> Document filed by United States Department of Justice, United States Marshals Service. (Aronoff, Peter) (Entered: 08/10/2018)
08/15/2018		***NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Notice to Attorney James David Pollock to RE-FILE Document <u>45</u> MOTION for Partial Summary Judgment . ERROR(S): Supporting documents must be filed separately, each receiving their own document number. Declaration in Support of Motion and Memorandum of Law in Support of Motion are both found under the event list Replies, Opposition and Supporting Documents. (Idi) (Entered: 08/15/2018)
08/16/2018	<u>47</u>	MOTION for Partial Summary Judgment . Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 08/16/2018)
08/16/2018	<u>48</u>	MEMORANDUM OF LAW in Support re: <u>47</u> MOTION for Partial Summary Judgment . . Document filed by Seth Freed Wessler. (Pollock, James) (Entered: 08/16/2018)
08/16/2018	<u>49</u>	DECLARATION of Seth Freed Wessler in Support re: <u>47</u> MOTION for Partial Summary Judgment .. Document filed by Seth Freed Wessler. (Pollock, James) (Entered: 08/16/2018)
08/16/2018	<u>50</u>	LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge Sidney H. Stein from J. David Pollock dated August 16, 2018. Document filed by Seth Freed Wessler.(Pollock, James) (Entered: 08/16/2018)
08/17/2018	<u>51</u>	ORDER granting <u>50</u> Letter Motion for Extension of Time to File Response/Reply. Application GRANTED. SO ORDERED. (Replies due by 8/22/2018.) (Signed by Judge Katherine Polk Failla, PART I on 8/17/2018) (anc) (Entered: 08/17/2018)
08/22/2018	<u>52</u>	CONSENT LETTER addressed to Judge Sidney H. Stein from Peter Aronoff dated 8/22/2018 re: stipulation and proposed order. Document filed by United States Department of Justice, United States Marshals Service.(Aronoff, Peter) (Entered: 08/22/2018)
08/22/2018	<u>53</u>	PROPOSED STIPULATION AND ORDER. Document filed by United States Department of Justice, United States Marshals Service. (Aronoff, Peter) (Entered: 08/22/2018)
08/22/2018	<u>54</u>	REPLY MEMORANDUM OF LAW in Support re: <u>47</u> MOTION for Partial Summary Judgment . . Document filed by Seth Freed Wessler. (Pollock, James) (Entered: 08/22/2018)
09/04/2018	<u>55</u>	STIPULATION AND ORDER MODIFYING FOIA REQUEST: NOW, THEREFORE, it is hereby STIPULATED and AGREED between the Parties as follows: Defendants' search and processing obligations in this action are governed solely by the terms of this Stipulation, and not by the original Request, except to the extent that this Stipulation expressly incorporates items of the Request ("Items"). Starting on the date both Parties sign this agreement (the "Execution Date"), Defendants will process an average of one thousand pages of potentially responsive records each month, subject to redactions or withholdings for any applicable FOIA exemptions. Starting on August 15, 2018, and on the 15th of each month thereafter (or, if that date is a weekend or federal holiday, the next business day), Defendants will provide Plaintiff the responsive, non-withheld pages processed in the past month. The Parties anticipate that the number of pages processed each month may vary, but the average number of pages processed per month in any 3- month period shall not be less than 900. Defendants' processing obligations under this Stipulation shall be complete when the total number of pages Defendants have processed consistent with the terms of this Stipulation reaches 18,000, regardless of the date when that occurs. Defendants' production for August 15, 2018, may be provided earlier than that date and may be based on priorities the parties have previously agreed on. Defendants will conduct the following additional searches within the timeframes listed, unless the Parties agree or the Court orders otherwise. The "Execution Date" is the date the Parties both sign this Stipulation and provide it to the Court for its approval. As set forth in this Order. Upon the completion of Defendants' search obligations under paragraph 5 of this Stipulation,

		Plaintiff agrees that Defendant's search obligations for documents responsive to the Request and the separate FOIA request sent to USMS on July 8, 2017 will have been satisfied. All other provisions as further set forth in this order. So Ordered. (Signed by Judge Sidney H. Stein on 9/4/2018) (js) (Entered: 09/04/2018)
12/27/2018	<u>56</u>	STANDING ORDER M10-468: The United States Attorney's Office shall notify the Court immediately upon the restoration of Department of Justice funding. (As further set forth in this Order.) SO ORDERED. (Signed by Judge Colleen McMahon on 12/27/2018) (ama) (Entered: 01/03/2019)